

MINUTES HEARING OFFICER OCTOBER 3, 2017

Minutes of the regular public hearing of the Hearing Officer, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

STUDY SESSION 4:30 PM

Present:

David Williams, Hearing Officer
Steve Abrahamson, Principal Planner
Lee Jimenez, Senior Planner
Karen Stovall, Senior Planner
Diane McGuire, Administrative Assistant II

There were 14 interested citizens present at the study session.

- Staff and the Hearing Officer discussed overview and updates to the scheduled cases for this hearing.

REGULAR SESSION 5:00 PM

Present:

David Williams, Hearing Officer
Steve Abrahamson, Principal Planner
Lee Jimenez, Senior Planner
Karen Stovall, Senior Planner
Diane McGuire, Administrative Assistant II

There were 15 interested citizens present at the regular session.

Meeting convened at 5:00 PM and was called to order by Mr. Williams. He stated that anyone wishing to appeal a decision made by the Hearing Officer would need to file a written appeal to that decision within fourteen (14) calendar days, by October 17, 2017 at 3:00 PM, to the Community Development Department.

1. The following was noted:

- Agenda Item No. 1

September 19, 2017 Hearing Officer Minutes

David Williams, Hearing Officer, stated that the September 19, 2017 Hearing Officer Minutes had been reviewed and were approved.

2. Request approval to abate public nuisance items at the **PAL PROPERTY (CE167310)** located at 2108 East Lemon Street. The applicant is the City of Tempe.

Hector Heredia, Code Inspector, gave an overview of this request. He noted that the citation(s) were for trash, litter and debris, as well as over height grass and weeds/deteriorated landscape on this property. The property has been in violation since October 2016 when an anonymous complaint was made.

Mr. Heredia explained that although initially some progress was made by the property owner, their efforts ceased. The property owner(s) have been non-responsive to bringing the property into compliance, despite being presented with corrective options. Staff requests approval of a 180 day open abatement period.

Mr. Williams questioned if Mr. Heredia had presented any options to the property owners for bringing the property into compliance. Mr. Heredia responded that it appeared that the property owners were overwhelmed with what needed to be done. The Code Enforcement staff had presented them with options such as the HEART program for landscaping assistance as well as the program Seniors for Independent Living, however the property has continued to deteriorate.

Mr. Williams asked if the property owners were present at this evening's public hearing. The property owner(s) were not in attendance.

Mr. Williams asked if there were any members of the audience who wished to address this case. There was no one.

Mr. Williams stated that this was a situation where the property owner continued to be non-compliant and the property is not being maintained. It is the property owner's responsibility to correct the violations. Mr. Williams noted that he recognized the condition of the property despite the efforts of Code Enforcement to provide avenues of assistance. He noted that he had done a drive by inspection and had reviewed the staff summary report and documentation presented by staff

DECISION:

Mr. Williams approved the abatement request for the Pal Property (CE167310) located at 2108 East Lemon Street for an open period of 180 days.

Mr. Williams noted that tonight's agenda items would be heard out of order, with the request by Lumberjaxes Axe Throwing to be heard prior to the request by Quick Quack Car Wash.

3. Request approval for a use permit to allow an amusement business (axe throwing) for **LUMBERJAXES AXE THROWING (PL170285)** located at 3109 South Fair Lane. The applicant is Angelo DiNardo of LB Jax Tempe LLC.

Lee Jimenez, Senior Planner, gave the following overview of this case:

- Mr. Jimenez presented both a location map and an aerial depiction of the subject property indicating its location and the surrounding zoning districts.
- He noted that Lumberjaxes Axe Throwing is proposing to operate an axe throwing amusement business in a 6,278 s.f. industrial building located on Lot 108 of the Eaton Freeway Industrial Park subdivision situation on the SEC of South Fair Lane and West Geneva Drive within the GID, General Industrial District.
- The applicant, Angelo DiNardo, indicates that the establishment will have 6 ft. 0 in. wide throwing lanes divided by metal fencing with oriented strand board (O.S.B.) provided as the target area. Each lane will hold up to 5 persons.
- The establishment will operate Monday through Sunday from 12 Noon to 5 PM by appointment only, and by walk-in and appointment Monday through Sunday from 5 PM to 10 PM.
- Staff has received one (1) inquiry about the use permit request, but no opposition was noted.
- Staff believes that this application meets the approval criteria for the use permit ,and supports this request subject to the assigned Conditions of Approval.

Mr. Williams questioned the status of the shared parking for this site, and whether there was adequate parking to support this new business. Mr. Jimenez responded that the parking had been analyzed by City staff, and that Condition of Approval No. 3 pertains to the parking situation.

Angelo DiNardo of LB Jax Tempe LLC was present to represent this case. He acknowledged receipt of the Staff Summary Report and his understanding of the assigned Conditions of Approval.

Mr. Williams asked if Mr. DiNardo had any questions. He responded that he did not, but expressed his excitement about introducing this new concept of entertainment to the Tempe area. He noted that his partner was one of the first people to introduce this activity.

Mr. DiNardo stated that he was ok with the assigned Conditions of Approval, and indicated his intent to adhere to any regulations that may apply to his business.

Mr. Williams asked if there was any member of the audience who wished to address this request. There was no one.

Mr. Williams acknowledged that this request meets the established criteria for a use permit as follows:

1. *Any significant increase in vehicular or pedestrian traffic;* the proposed use is not expected to significantly increase vehicular or pedestrian traffic in adjacent areas. If conditionally approved, the proposed use will require approximately eighteen (18) off-street parking spaces; two (2) less than what is required for office which is permitted by right in the GID.
2. *Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions;* the nature of the business will not generate emissions greater than ambient conditions and will be conducted inside the premises.
3. *Contribution to the deterioration of the neighborhood or to the downgrading of property values, which is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan;* the proposed use is not in conflict with the goals, objectives and/or policies adopted by the City.

4. *Compatibility with existing surrounding structures and uses;* the proposed use is compatible in nature with uses allowed by right in the GID and not changes to the exterior of the building or site are anticipated.
5. *Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public;* the proposed use will be properly staffed to provide adequate supervision and safety to members of the public.

DECISION:

Mr. Williams approved the request for a use permit to allow an amusement business (axe throwing) for Lumberjaxes Axe Throwing (PL170285) located at 3109 South Fair Lane subject to the following Conditions of Approval:

1. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
2. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.
3. In order to assure that adequate off-street parking is provided for both the proposed and existing uses at this site, the number of throwing lanes shall be limited to eleven (11) lanes. The number of lanes may increase subject to the maximum occupancy allowed in the space and the number of required off-street parking spaces for all on-site uses.
4. Live entertainment requires a separate Use Permit.
5. An occupancy inspection and clearance from the Tempe Fire Department shall be obtained prior to the use permit becoming effective.
6. The applicant shall contact the City of Tempe Crime Prevention Unit for a security plan within 30 days of this approval. Contact 480-858-6409 before November 2, 2017.

4. Request approval for a variance to reduce the required landscape buffer from the street sidewalk for a maneuvering drive lane from 20 feet to 11 feet 8 inches for **QUICK QUACK CAR WASH (PL170240)** located at 5201 South McClintock Drive. The applicant is Identity Mutual LLC.

Karen Stovall, Senior Planner, gave the following overview of this case:

- Ms. Stovall presented a location map indicating the proposed site and the surrounding community and zoning designations. She noted that this variance request is for the property located at 5201 South McClintock Drive which is zoning as PCC-1, Planned Commercial Center Neighborhood District.
- Ms. Stovall indicated on an aerial map that the site is located at the southeast corner of McClintock and Baseline. It is surrounded to the south, east and north across Baseline Road by commercial centers.
- To the west of the site, across McClintock Drive, there is an auto dealership.
- Ms. Stovall presented a site plan and explained that the applicant proposes to demolish the existing gas station and build a new automatic car wash building with self-service vacuum canopies.
- With this proposal, the applicant is requesting a variance to reduce the required landscape buffer from the sidewalk along Baseline Road for a maneuvering drive lane to enter the car wash tunnel from 20 ft. to 11 ft. 8 in.

- The applicant held a neighborhood meeting on August 21, 2017 and three (3) individuals attended. A summary of that meeting is provided in the staff summary report and the accompanying attachments.
- Staff has received two (2) letters of opposition. One (1) was included as a report attachment; the other was provided to the Hearing Officer at today's study session.
- Based on the information submitted by the applicant and a review of the variance criteria, staff recommends approval, subject to the assigned Conditions of Approval.

Mr. Williams questioned the approval process for a development such as this car wash, and whether staff had provided an analysis of the proposed site plan prior to this request.

Ms. Stovall noted that the applicant had submitted for a Preliminary Site Plan Review in January 2017 and at that time received a comment from the City's Public Works – Transportation Division that a 10 ft. right of way dedication was required on Baseline Road.

Ms. Stovall additionally explained that a request will be presented to the Development Review Commission at an as yet undetermined date for approval of a site plan, building elevations and landscape plan, as well as two (2) use permit applications to allow a car wash and to exceed the maximum number of parking spaces allowed on the site (125%).

Ms. Lindsay Shube of Gammage & Burnham was present to represent this case.

Mr. Williams questioned who Ms. Shube was representing. She acknowledged that she was the representative of Quick Quack Car Wash for the applicant, Michael Clark of Identity Mutual LLC, who was present in the audience. She acknowledged receipt of the Staff Summary Report and their understanding of the assigned Conditions of Approval.

Ms. Shube presented a power point presentation substantiating the applicant's request. That presentation indicated the following points:

- An aerial map showing the site location and the uses associated with the surrounding area.
- A zoning map indicating the site, its assigned zoning designation of PCC-1, and the assigned zoning districts of the surrounding area properties.
- She reiterated the applicant's specific variance request and numerical dimensions, and that it was due to the City of Tempe's request for a 10 ft. right-of-way dedication to accommodate a bus bay on the property's Baseline Road frontage. To accommodate the loss of lot depth from the ROW dedication, the applicant is requesting the variance to reduce the landscape setback in order to accommodate the drive aisle.
- Ms. Shube displayed a site plan and explained how this variance request meets all applicable criteria elements, including that the situation was not self-imposed and that other drive-through locations in the same intersection have non-conforming maneuvering lane setbacks.

Mr. Williams asked what period of time was covered by the terms of the lease agreement for Mr. Clark. Ms. Shube conferred with Ms. Clark and returned to the podium, stating that the lease agreement was for 20-25 years with 2 additional 5 year options.

Mr. Williams thanked Ms. Shube for her presentation, and noted that he had request cards from individuals who wished to speak on this case.

Ms. Jordan Rose of Rose Law Group representing the interests of Mr. Michael Pollack, owner of Peter Piper Plaza, the property that abuts the proposed car wash site on its eastern and southern sides.

Ms. Rose presented a power point presentation in support of Mr. Pollack's opposition to this request which indicated the following points:

- A site plan indicating the location of the proposed car wash as well as the area in opposition to this request.
- Ms. Rose stated that, in their opinion, there are no special circumstances applicable to this property as the site is not a small size entity but is approximately 33,367 s.f., and that this request for reduction is extreme in nature and attempting to use the City's ROW request as leverage for a reduction in development standards.
- Those development standards require that all maneuvering drive lanes shall provide for a minimum 20 ft. landscape buffer from the street sidewalk. This requirement was implemented City wide in 2010 for safety and quality.
- Ms. Rose stated that this site is prime real estate located on a busy intersection. She indicated that if the applicant chose to locate his car wash at a more suitable location they would not need a variance which would underutilize an important site by providing a special exception that is entirely self-imposed.
- Ms. Rose noted that at 33,367 s.f. the proposed Quick Quack Car Wash was still larger than other similar car washes in the area. She stated that these other car washes included:
 - Classic Car Wash at 33,106 s.f.
 - 3 Minutes Car Wash at 20,201 s.f.
 - Clean Freak Car Wash at 26,250 s.f.
 - Quick n Clean Car Wash at 29,2815 s.f.
- Even with the 10 ft. bus bay dedication, the lot of the proposed Quick Quack Car Wash was still larger than most other car wash lots at 32,107 s.f., meaning, Ms. Rose stated, that special circumstances are not applicable to the property, and that the applicant could make a far smaller sized site work for his proposed project.
- This lot is totally flat and a regular shape not burdened with surroundings so it is relatively a simple lot to develop as is without any need for variances.
- Ms. Rose referred to other sites in the area which have been developed without variances including El Pollo Loco on the northwest corner, Chapman Chevy on the southeast corner, and U S Bank were developed without any variances. Ms. Rose noted that Mr. Pollack has developed all of his properties without variances.
- Raceway Car Wash is a 35,363 s.f. car wash that met the required setbacks and required no variance(s).
- Ms. Rose stated that to allow a variance on landscaping at this crucially important intersection would be a special privilege as reducing the landscaping will not in any way help the City or neighboring landowners.
- Ms. Rose noted that Quick Quack Car Wash proposed a Phoenix location (SEC Thomas & 7th Street) 3 months ago on a smaller site and did not ask for variances. That location proposed 25,526 sf. And included 10 vacuum stalls whereas the proposed Tempe location proposed 16 vacuum stalls.
- All of the above points indicate that this proposed variance is self-imposed and not due to special circumstance, Ms. Rose stated. The requirement for landscaping is important to maintain quality development in Tempe and the most directly affected neighbor(s) are opposed to this request due to the negative affect the car wash will have on their property values.

Mr. Williams asked Ms. Rose if her client, Mr. Pollack, feels that this variance will harm the property site. Ms. Rose responded in the affirmative.

Mr. Williams thanks Ms. Rose for her presentation and noted that he had additional speaker request cards as follows:

Ms. Judy Morris, Tempe resident, spoke in opposition to this request. She stated that she was concerned over the noise that would be generated by this car wash and did not feel that the proposed site was a desirable location.

Ms. Sylvia Orioli, Tempe resident, spoke in opposition to this request. She stated that she lived in the area of East Harvard Drive. She expressed serious concerns about the safety and traffic hazards that would be increased at this intersection at McClintock and Baseline due to increased traffic associated with the car wash activities. There are already numerous car accidents in the area and this intersection is one of the busiest in Tempe. There are already many car washes in the immediate vicinity and the neighborhood does not need one more car wash. There are other uses that would be more appropriate for this heavily visited intersection. Another car wash would add to the noise pollution that is already present in the area. A reduction of the landscape buffer as proposed would create more serious traffic and visibility problems. It would be better to wait until after the bus bay has been relocated and a traffic study performed before granting a variance for landscape reduction. She stated that, as neighbors of this site, she doesn't understand why the applicant needs a variance.

Mr. Williams indicated that he had a speaker request card from Ms. Pat Crowe. Ms. Crowe indicated that she did not wish to speak at the podium but requested that Mr. Williams read her comments, as written on the card, into the record. Mr. Williams did so. He stated that Ms. Crowe was in opposition to this request as she did not feel they needed an eye sore on the corner and that car wash would increase the noise to an unacceptable level. Tempe has landscape buffer laws in place and these should be adhered to. There are already three (3) car washes within a 2 mile radius.

Mr. Williams thanked Ms. Morris and Ms. Orioli for attending this evening's public hearing and expressing their concerns.

Mr. Williams asked if there was any member of the audience who wished to address this request. There was no one.

Mr. Williams noted the safety concerns of the residents regarding the increased traffic this car wash may implement. He asked about the type of landscape the applicant will be required to provide.

Ms. Stovall responded, explaining that the applicant is required to provide trees on Baseline and McClintock and a percentage of shrubs and landscaping as detailed in the approved landscape plan.

Mr. Williams asked at what stage the development plan is at the present time. Ms. Stovall responded that the Preliminary Site Plan Review had been completed, and that the applicant is moving thru the process, including an upcoming Development Review Commission public hearing at which time the final site development (landscape, building elevations, site plan, use permits) will be presented to that governing body for approval.

Mr. Williams acknowledged that this is an important intersection and that the use of the property for a car wash is not something he can rule on today. The City's 10 ft. right of way dedication request was made by the Public Works – Transportation Department during the preliminary site plan review meeting in January 2017 and imposed on the applicant at that time.

Mr. Williams acknowledged that concerns about a proposed use is always a challenge. A lot of times, the nearby residents are not in support of the proposed foot print for a new use. At this point, the neighbors have had the opportunity to attend a neighborhood meeting and review the proposed plans. Additionally, they will have the opportunity to attend the Development Review Commission public hearing, when it is scheduled.

Mr. Williams stated that he is inclined to agree with staff who support this variance request subject to the assigned Conditions of Approval.

Mr. Williams acknowledged that this request meets the established criteria for a variance as follows:

1. *That special circumstances are applicable to the property, including its size, shape, topography, location, or surroundings;*

Due to the requested right-of-way dedication on Baseline Road, the depth of the property is being reduced by 10 ft. This dedication is intended to accommodate a new bus pullout and shelter and shifts the existing sidewalk 10' to the south. East of the site, the right-of-way width will remain 55 ft. The dedication for these transit improvements creates a special circumstance applicable to the property.

2. *The strict application of this Code will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district*

The right-of-way dedication is being requested of this particular development/property. Elsewhere, along the north and south sides of Baseline, both east and west of McClintock, the half-street rights-of-way will remain 55 ft.

3. *The adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located*

A range of parking and maneuvering setbacks exist along Baseline Road, and granting of this Variance would not create conditions that are inconsistent with other PCC-1 zoned properties in the vicinity.

4. *A variance may not be granted if the special circumstances applicable to the property are self-imposed by the property owner.*

The right-of-way dedication is being made at the request of the City of Tempe and is not self-imposed by the property owner.

DECISION:

Mr. Williams approved the request for a variance to reduce the required landscape buffer from the street sidewalk for a maneuvering drive lane from 20 ft. to 11 ft. 8 in. for Quick Quack Car Wash (PL170240) located at 5201 South McClintock Drive subject to the following Conditions of Approval:

1. Development shall be in substantial conformance with the site plan dated August 24, 2017, subject to further review and approval by the Development Review Commission. The maneuvering drive lane setback may not be reduced further without approval of another variance.
2. This variance is valid only after a Building Permit has been obtained, the required inspections have been completed, and a Final Inspection has been passed.

ANNOUNCEMENTS

- Mr. Williams noted that the next Hearing Officer public hearing is scheduled for Tuesday, October 17, 2017 at 5:00 PM with a study session scheduled for 4:30 PM.
- Mr. Steve Abrahamson, Principal Planner, noted the following:
 - October is National Planning Month. The City of Tempe is the recipient of two (2) awards from the Arizona Planning Association. One for the Tempe General Plan 2040, and one for the Apache Character Area Plan.
 - Mr. Abrahamson noted that many staff members would be attending the State American Planning Association Conference scheduled during the month of October.

With no further business, the public hearing adjourned at 5:49 PM.

Prepared by: Diane McGuire, Administrative Assistant II
Reviewed by:



Steve Abrahamson, Principal Planner
For David Williams, Hearing Officer

SA:dm